

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1217 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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VAGRI BHARATBHAI BHAVANBHAI

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE Ld. AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. The District Magistrate, Bhavnagar passed an order on 18.11.1999 in exercise of powers under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act, for short) detained Vaghari Bharatbhai Bhavanbhai of Palitana under the provisions of the said Act.

2. The detaining authority while passing the order of detention considered three registered offences against

the detenu and statements of three anonymous witnesses as grounds of detention. The detaining authority found that fear expressed by the anonymous witnesses qua the detenu is correct and genuine and, therefore, the identity of the witnesses is required to be withheld by exercising the powers under sec. 9(2) of the PASA Act. The detaining authority further considered the possibility of resorting to the less drastic remedies and came to a conclusion that the detention under PASA is required to be resorted to in order to immediately prevent the petitioner from pursuing his illegal and anti-social activities which were found to be that of dangerous person by the detaining authority. The petitioner came to be detained under the PASA Act therefor.

3. The petitioner/detenu challenges the order of detention on various grounds. However, Ms. Patel learned advocate for the petitioner submitted that the statements of three anonymous witnesses, in respect of whom privilege under sec. 9(2) of the PASA Act has been exercised by the detaining authority, cannot form ground for detention. According to her, the detaining authority has used the powers without undertaking the exercise of verifying the correctness and genuineness of the statement and fear expressed by the witnesses qua the detenu, and, therefore, the subjective satisfaction in this regard cannot be considered as genuine. Withholding of the identity of the witnesses, therefore, has affected the right of the detenu of making an effective representation guaranteed under Article 22(5) of the Constitution of India. This would vitiate the detention.

4. As regards the registered offences, Ms. Patel submitted that all the three offences relate to the offence of theft. There is nothing to indicate any disturbance to public order and, therefore, the subjective satisfaction recorded by the detaining authority about the activities of the detenu being detrimental to the public order cannot be considered as genuine. Ms. Patel therefore urged that the petition be allowed and the impugned order may be quashed and set aside.

5. Mr. KT Dave, learned AGP has opposed this petition.

6. Having regard to the rival side contentions, it may be noted that the registered offences which are relied upon by the detaining authority relate to the theft cases. Perusal of the compilation of the papers supplied to the detenu along with the grounds of

detention does not indicate any disturbance to public order in respect of these offences. At the most, they can be said to have disturbed the law and order and not public order.

7. So far as the statements are concerned, the statements came to be recorded on October 21, and November 4, 1999. The statements were verified by the D.Y.S.P. on November 5, 1999. The detaining authority has verified the statements by putting one word verification, as is stated at the bar by learned AGP Mr. Dave after verifying the file. Assuming that the statements have been verified, admittedly, by one word verification, the detaining authority has not filed any affidavit in reply. There is nothing to indicate that the detaining authority has undertaken the exercise of examining the background, antecedents, character etc. of the detenu. There is nothing to indicate that the detaining authority considered the right of the detenu of making an effective representation, as against need for exercise of powers under sec. 9(2) of the PASA Act. There does not appear to be any contemporaneous material to indicate that such powers are exercised by the detaining authority after undertaking such exercise. In the light of the decision in the case of Bai Amina W/o Ibrahim Abdul Rahim vs. State of Gujarat & others, reported in 1981 GLR p. 1186, the subjective satisfaction gets vitiated.

8. The out come of the above discussion is that the subjective satisfaction recorded by the detaining authority regarding the activities of the detenu being detrimental to the public order and the discretion used by the detaining authority for exercising the powers under sec.9(2) of the PASS Act, are vitiated. Under the circumstances, the order of detention cannot be upheld. It deserves to be quashed and set aside.

9. In the result, this petition is allowed. The impugned order of detention passed by the District Magistrate, Bhavnagar on 18.11.1999 in respect of Vaghari Bharatbhai Bhavanbhai is hereby quashed and set aside. The detenu be set at liberty forthwith, if not required for any other case. Rule is made absolute with no order as to costs.

(A.L. DAVE, J.)

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